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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

September 10, 1999

Robert Lawrence
Davis, Graham & Stubbs LLP
Suite 4700
370 Seventeenth Street
P.O. Box 185
Denver, Colorado 80201-0185

RE: Unilateral Administrative Order for Response Actions,
CERCLA Docket No. CERCLA-10-99-0234

Dear Mr. Lawrence:

By letter dated August 31, 1999, the Union Pacific Railroad requested an opportunity to confer with the U.S. EPA Region 10 on the above referenced Unilateral Administrative Order (UAO). Such conference was held at EPA Region 10's office in Seattle on September 8, 1999, with Union Pacific represented by you and Tom Greenland together as counsel. At such conference, Union Pacific raised two issues concerning the UAO: 1) the breadth of Union Pacific's obligation to reimburse Past and Future Response Costs, pursuant to Paragraph 35; and 2) the timing for removal of concentrates, pursuant to Paragraph 23. This letter provides EPA's response to both issues raised.

Concerning Union Pacific's obligation to reimburse Past and Future Response Costs, EPA recognizes that the parties have made considerable progress toward reaching a consent decree addressing the length of the Union Pacific right-of-way through the Coeur d'Alene Basin. Through this consent decree, Union Pacific will provide for full reimbursement of Past and Future Response Costs. The parties are endeavoring to lodge this consent decree by November 1, 1999.

Based on progress observed in recent consent decree negotiations, and based on the schedule laid out by the parties for concluding these negotiations, EPA believes that it will not need to seek payment of response costs from Union Pacific through the referenced UAO. Therefore, EPA HEREBY AMENDS Paragraph 35 of the referenced order to read as follows:

35. Respondent shall reimburse EPA, upon written demand from EPA, for all Construction Oversight Costs, as defined in this Order. EPA may submit to Respondent on a periodic basis a bill for all Construction Oversight Costs incurred over a defined period.



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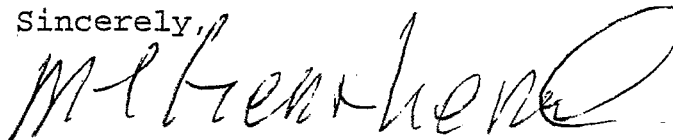
Concerning the timing for removal of concentrates, EPA remains interested in initiating the removal of concentrates from the right-of-way this field season. This is particularly true if, as was mentioned in our conference, field work for concentrates removal can be initiated and completed in approximately one week. EPA is not insensitive to concerns for the costs of mobilizing field crews and managing the collected materials over the winter. However, while we are uncertain about the extent of such costs, we remain concerned about the present potential for exposures to concentrates and the continued mobility of concentrates throughout the winter. EPA's concern for timely action to address concentrates on the Union Pacific right-of-way is consistent with EPA's concern for timely cleanup actions throughout the Coeur d'Alene Basin. As you may know, EPA is itself presently conducting substantial removal actions in the Basin, in advance of final remedial decisions.

In any event, the UAO does not, in itself, require the initiation of concentrates removal this field season. Paragraph 23 of the UAO requires the submission and implementation of a Concentrates Accumulation Removal Work Plan, which "shall include a schedule for initiating on-site construction activities." EPA encourages Union Pacific to submit a schedule for concentrates removal that Union Pacific believes is reasonable at the present time, considering the concerns raised in this letter. Any further information that Union Pacific believes is relevant to this matter may be submitted and will be considered by EPA.

Consistent with Paragraph 19 of the UAO, unless otherwise modified in writing by EPA, Union Pacific would have until Monday, September 13, 1999, to submit its Notice of Intent to Comply. Through this letter, EPA HEREBY MODIFIES the UAO to require submission of Union Pacific's Notice of Intent to Comply by **Wednesday, September 15, 1999.**

If you have any legal questions regarding this letter, please call Cliff Villa at (206) 553-1185. Technical questions may be directed to Earl Liverman at (208) 664-4858. EPA appreciates the continued cooperation of Union Pacific to address environmental concerns in the Coeur d'Alene Basin, and looks forward to timely conclusion of consent decree negotiations.

Sincerely,



Michael F. Gearheard, Director
Environmental Cleanup Office